

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

HITACHI MAXELL, LTD.)
DOCKET NO. 5:16cv178
-vs-)
Texarkana, Texas
HUAWEI DEVICE USA INC.,) 2:01 p.m.
ET AL September 27, 2017

TRANSCRIPT OF HEARING ON MOTION TO DISMISS
BEFORE THE HONORABLE ROBERT W. SCHROEDER III,
UNITED STATES DISTRICT JUDGE

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 Mrs. Schroeder, if you would, call the case for us.

4 THE CLERK: Cause No. 5:16cv178, Hitachi Maxwell,
5 Ltd. vs. Huawei Device USA Inc., et al.

6 THE COURT: Announcements for the record.

7 MR. CULBERTSON: Your Honor, Geoff Culbertson. I'm
8 here today with Tripp Fussell and Jamie Beaber from Mayer
9 Brown in Washington DC. And we are ready.

10 THE COURT: Very well. Thank you, Mr. Culbertson.
11 Welcome.

12 Ms. Ainsworth.

13 MS. AINSWORTH: Good afternoon, Your Honor.
14 Jennifer Ainsworth, Stanley Young, Anupam Sharma, and Greg
15 Nieberg for the Huawei Defendants. And we are ready to
16 proceed.

17 THE COURT: Good. Very well. Thank you, Ms.
18 Ainsworth.

19 We are here on Huawei's motion to dismiss related
20 to the '139 and '292 patent, and I think the parties are in
21 general agreement that an hour per side will be an adequate
22 amount of time to cover all of the issues we need to cover.

23 So, perhaps, we will take a break before rebuttal,
24 so Huawei may proceed.

25 MS. AINSWORTH: Your Honor, if I may approach.

1 THE COURT: Yes.

2 (Slides distributed.)

3 MR. YOUNG: Thank you very much, Your Honor. Good
4 afternoon. Stanley Young for the Defendants Huawei.

5 We have a case here that is very much like ones
6 that the Court has considered over the last year -- or the
7 last six months actually, involving the Alice Step 1 and
8 Step 2 analysis under Section 101.

9 Both of the patents in this case involve the
10 gathering and calculating and grouping and otherwise dealing
11 with processing information. That is an abstract idea under
12 the Federal Circuit decisions Electric Power, Digitech, and
13 others.

14 Those ideas are applied in these patents in a
15 specific technological context, but that does not make them
16 patentable subject matter.

17 Under Alice Step 2, there is no inventive concept.
18 As we will see, the patents and their claims recite
19 conventional cellular handsets, GPS devices, central
20 processing units, and other standard computer components that
21 are used in a conventional way. There is no unconventional
22 use of those components and, therefore, no inventive concept.

23 The inventive concept that the Plaintiff seeks to
24 point to is simply the abstract idea. They say that it is an
25 arrangement of those components in a way that is

1 unconventional; but the components themselves and the way
2 they are used, the way they receive signals that they have
3 always received, is not inventive and is totally
4 conventional.

5 It is a fundamental practice of human endeavor to
6 gather and process information. A fundamental principle of
7 the 101 Alice line of cases is that you don't want to preempt
8 people from adopting technological improvements in those
9 areas.

10 Both of these patents don't introduce -- neither of
11 these patents introduces any technological improvement. They
12 are simply boxes that describe functions and goals. And
13 under that, the principle that has been set forth in the
14 cases in this area that makes them unpatentable subject
15 matter.

16 We will go through the patents. I will talk a
17 little bit about the law in greater detail, and then go
18 through each patent to see how that law results in the
19 invalidity or the unpatented unpatentability of these
20 patents.

21 The '292 patent basically involves combining two
22 data sources. As outlined in red on the figure in front of
23 you, Your Honor, the 200, 201, and 204 elements gather
24 GPS-related information on position and the reliability of
25 that position information.

1 300, 302, and 305 gather cellular-related position
2 information and information on the reliability of that
3 cellular position information.

4 That information then gets fed into 400, which is
5 the GPS/cellular positioning results combining unit.

6 Figure 2 of the patent just is a flow chart of
7 those same operations. There is receipt and calculation of
8 the information from the cellular and GPS receivers that gets
9 put into step 606, which is combining those pieces of
10 information in accordance with their weight, which leads to
11 an output.

12 Now, the patent explicitly says that there is no
13 order required in these operations. So these could be done
14 in some different order than what is shown in Figure 2.

15 There are two claims in the patent that reflect
16 exactly the steps that are shown in these diagrams. You have
17 the receiver, position calculation, and reliability
18 calculation means elements in Claim 1 for GPS outlined in
19 pink there.

20 Then in yellow you have very similar analogous
21 means elements for the cellular information. That gets fed
22 into the GPS/cellular combining means, which is in the blue
23 there on the right.

24 Claim 2, unlike Claim 1, is a method claim.
25 Claim 1 is a means-plus-function element. Claim 2 is a

1 method claim. But the scope is pretty much exactly the same
2 except for one minor difference relating to simultaneity of
3 calculation at the end. But you will see there the
4 functions -- the steps, rather, that are cited in Claim 2
5 precisely map on to the alleged structural elements of
6 Claim 1.

7 The '139 patent involves a similar processing of
8 information relating to base stations. Here in what is
9 shaded in gray -- and we will provide you, Your Honor, with
10 these hard copies of this presentation -- in 101 of Figure 1,
11 you have the classification of base stations into multiple
12 groups. In Figure 3A those are called G1, G2, and G3.

13 Then you have obtaining communication quality
14 indices from each of the base stations. That is simply some
15 indication of the quality of the communication.

16 In Figure 3A the example is receive power, so how
17 much power is being received in connection with that base
18 station. And you have that in yellow.

19 Then you calculate characterizing quantities of the
20 communication quality for each group. That is step 103 in
21 Figure 1 as shown in pink in that figure and in the figures
22 3A, B, and C.

23 There you have a group score that is calculated for
24 each of the groups. So for group G1, for example, you take
25 the received power R1 and R2 and you calculate a group score,

1 which is designated as S1.

2 As shown in Figures 3B and C, you could calculate
3 that group score either by adding the scores of the
4 individual base stations or averaging the scores of the
5 individual base stations. But the key is you simply have a
6 group score that is taken from the individual base station
7 scores.

8 The next step in blue, 104 and 105, is specifying
9 one group in accordance with those group scores.

10 So just to take an example, you could pick the
11 group with the highest group score. And then in 105 of
12 Figure 1 you specify one base station in that group.

13 Claim 1 maps on to that diagram. The first step is
14 obtaining the information about the individual base stations.
15 Step 2 is calculating the group scores. And step 3 is taking
16 one of the base stations from one of the groups that you have
17 selected, based on those characterizing quantities.

18 There are some apparatus claims as well. Claim 11
19 recites the same steps in the context of a control unit.
20 There is also a storage unit there that is also not
21 convention -- is also conventional.

22 There is some dependent claims that specify the
23 particular communication quality index to be used. Excuse
24 me. So you have receive power, which is what is in Figure 3.
25 You have communication bit rate. You have SNR value, which

1 is signal to noise ratio, which measures the noise and
2 quality of the signal.

3 Then you have more generic metrics of wireless
4 communication that are referred to in other claims. And you
5 have a prior art positioning method which doesn't add
6 anything either. That is just using the signals and the time
7 between sending and receipt, which is sort of like, you know,
8 people have done that for ages. It is like radar, and that
9 doesn't add anything to the claims either.

10 So the question is, given this set of disclosures
11 of the claims, what should be the outcome under Alice in
12 Section 101? I think the Court is very familiar with the
13 two-step Alice process, abstract idea and inventive concept.
14 And I will discuss each of those here.

15 The key here is the fact that manipulation of
16 data -- excuse me -- is not a patentable concept. It is an
17 abstract idea. The Electric Power case is a very good one,
18 and I will give you some detail on that in a bit. But really
19 these claims just deal with and are completely directed to
20 organizing, displaying, and manipulating data.

21 Now, in their briefing, Plaintiff says that we have
22 characterized that in different ways. I don't think so. If
23 you look at all of the ways we have characterized it, it is
24 the same thing as what we are saying now, it's organizing,
25 displaying, and manipulating data.

1 Step 2 of Alice requires something significantly
2 more than the abstract idea. In order to show entitlement to
3 a patent, the patent owner must demonstrate that the claims
4 feature something beyond routine and conventional activities.

5 And it can't just be insignificant extra-solution
6 activity. It has to be something that allows the Court to be
7 comfortable that the abstract idea is not being preempted.
8 Simply placing the abstract idea and using it in a particular
9 technological environment, limiting it to cell phones say,
10 does not suffice to make an abstract idea patentable.

11 In particular in this case we have generic computer
12 elements such as CPUs, storage memories, and other elements
13 such as GPS receivers, cellular receivers that are being used
14 in their conventional, traditional, generic way. And that
15 does not create patentable subject matter.

16 Plaintiff has submitted some expert declarations.
17 For the reasons that we cited in our brief, we believe the
18 Court should ignore those.

19 THE COURT: Wait. Can you remind me exactly what
20 specific reasons you gave in your brief for ignoring those?
21 I mean, why is expert testimony inappropriate to support an
22 argument like this?

23 MR. YOUNG: The patents can be read. They are part
24 of the pleading. Generally, on a motion for judgment on the
25 pleadings or a motion to dismiss, the Court need not consider

1 extrinsic evidence. Those expert declarations are
2 interpretations. They are extrinsic evidence. So I believe
3 the Court can and should ignore them.

4 Should the Court choose to consider them, we
5 certainly dispute the merits of them. They don't really talk
6 about the unconventionality of the components that are in the
7 case. They focus on the alleged unconventionality of the
8 abstract ideas that are stated in both of these patents. So
9 both procedurally and substantively they should not be
10 considered.

11 Going to the '292 patent and, again, here are the
12 claims. The abstract idea is combining the two data sources
13 that is manipulating the data based on their reliability.

14 And here I think it is quite useful to compare the
15 claims of the '292 to the claim in the Electric Power case.

16 Excuse me, Your Honor.

17 As you will see, the Electric Power case involved a
18 claim that called for receiving data. And this is about an
19 electric power grid. This is true technology, and involved a
20 lot of detail about how electric power grids work, and it
21 involved a lot of data from an electric power grid.

22 Detecting and analyzing events in real time from
23 that data, accumulating and updating the measurements from
24 that data, and then deriving a composite indicator of
25 reliability based on that data, that is very similar to the

1 claim of the '292 patent. And I believe that the result for
2 the '292 patent should be the same.

3 The Digitech case is also very similar. The claim
4 in that case was for generating a device profile, which calls
5 for generating sets of data and then combining those sets of
6 data into a device profile. That is exactly the kind of data
7 manipulation and combination that we have in the '292
8 patent.

9 As Digitech said back in 2014, simply taking two
10 data sets and combining them into a single data set, is not
11 patentable. It is simply calculating; and even if it is for
12 a specific purpose, even if it is for a beneficial purpose,
13 that by itself does not make the patent eligible under
14 Section 101.

15 With respect to some other case law here, as you
16 can see from the Electric Power case, even if it is a
17 desirable outcome, the fact that it uses simple combination
18 of data and components that are generic, does not make it
19 patentable.

20 Just like what the -- happened in TLI
21 Communications, the patent, as you can see from the figures,
22 does not provide any technical details for the functions that
23 are claimed.

24 Going to Step 2 of Alice, the combination that we
25 have seen, the claims that we have seen, do not involve any

1 inventive concepts. We have cellular communications, cell
2 phones just receiving signals, and we have GPS components
3 that are doing the same thing. They calculate positions just
4 as this Court found in the Rothschild case.

5 The background section of the '292 patent
6 emphasizes the non -- that -- the lack of something
7 unconventional in these claims. It talks about how in the
8 past, and this is the background of the convention -- of the
9 patent, rather, in Column 1 starting at Line 13, how mobile
10 handsets have used GPS and how cellular networks have been
11 used in connection with GPS.

12 The patent itself further details how the claims do
13 not add inventive concepts. You will see there in the middle
14 of the first paragraph that is starting at Column 2, Line 38,
15 that it relies on elements that are well-known. And it
16 certainly is not limited to any new or unconventional
17 elements or arrangement of elements. And it seeks to sweep
18 in parts and orientations that are conventional.

19 Going to the GPS status sources. The description
20 in Column 2 starting at Line 51 talks about GPS parts of this
21 claim in a way that is no different from the way that GPS
22 equipment has been used.

23 As this Court found in the Rothschild case, a GPS
24 device performing such generic tasks does not create
25 patentable subject matter.

1 Going to the cellular side, it is really the same
2 thing. Down at the bottom of Column 2 and top of Column 3,
3 the discussion there is of a receiver and a mobile handset
4 receiving and calculating its positions using cellular
5 signals. There is nothing unconventional there.

6 When you get to the combining element, Figure 3 of
7 the patent discloses a use of a weighted average formula.
8 And there you simply take the location for GPS and the
9 location for the cell network, which consists of X and Y
10 coordinates, you multiply them by the weights, respectively,
11 of the GPS and cellular, that is the W_{gps} and W_{cell} , and you
12 created a weighted average of the coordinates, and that is
13 just manipulating data. And it is not manipulating data in
14 any new way. People have been using weighted averages for a
15 variety of purposes forever.

16 So those concrete, tangible components, while they
17 are concrete, are not new. They are totally conventional.
18 They are well-understood, standard in the industry, and
19 therefore, this is not patentable.

20 This Court itself in cases like *Uniloc vs. Amazon*
21 has emphasized that the traditional arrangement of computer
22 components distinguishes this case from others where
23 patentable subject matter has been found.

24 The file history emphasizes this point as well.
25 The Patent Office had found that the Watters patent had

1 anticipated the claims as originally submitted, and it was
2 only the addition of the simultaneity elements which led to
3 the patent being issued. We believe that was an error; and
4 that the patent, obviously, is not distinct from the prior
5 art. But that is what the Patent Office said.

6 The issue of claim construction has been argued,
7 that the Court should defer until after claim construction
8 its decision on that motion. We believe that to be wrong.
9 Since the briefing in the case, the parties have submitted a
10 joint claim construction and prehearing statement. And the
11 claim construction positions set forth in that document
12 actually support our motion.

13 Here are several of Plaintiff's alleged -- or
14 proposed claim constructions for elements of Claim 1.

15 And what they claim there as the structure -- and
16 under 112(6) the structure helps define the claim, there are
17 processors such as CPUs that are used to accomplish the goals
18 that are set forth in the patent.

19 A CPU is a general computer component. It can do
20 different things if it is programmed, obviously. But it is
21 really a general generic component that does not lend
22 inventive concept to an abstract idea. The case law is very
23 clear that you can't just say, well, let's take a computer
24 and have it do these things and have that be a patentable
25 subject matter. That is just not the case.

1 The other thing is that these claim constructions
2 don't present any issues that would change the result on the
3 Alice issue one way or the other.

4 The simultaneity element similarly does not cause
5 the Court to have to defer its decision on this issue. Both
6 of the parties agree that that term should be given its plain
7 and ordinary meaning, so there is nothing really that turns
8 on simultaneity.

9 Moving now to the '139 patent, here again, we have
10 another set of claims that simply collects, calculates, and
11 issues an output based on that calculation of data.

12 That is not sufficiently technological. It is not
13 like Enfish where the computer's operation itself is being
14 improved. There are no structural components other than
15 processors and general networks and storage units that are
16 recited in the claims that make this a patentable subject
17 matter.

18 Actually, both in the '139 and the '292, there is
19 no particular way of programming or designing the software to
20 accomplish this claimed functionality. And, therefore, for
21 that reason, as well as this Court noted in Uniloc vs. AVG,
22 these claims do not cite patentable subject matter.

23 I think a key disclosure of the '139 patent appears
24 at the top of Column 6, which states, quote: The wireless
25 communication function and the base station selection

1 algorithm are implemented by executing the software stored in
2 the RAM by the CPU. RAM is completely conventional memory.
3 The CPU is a completely generic computer component. They may
4 in any case that we might look at, be programmed to do
5 different things; but that does not make an abstract idea
6 patentable.

7 There is nothing unusual in the arrangement of the
8 RAM or the CPU. There is nothing claimed about how they are
9 somehow situated differently. The only claim here is that
10 they do different things in accordance with this allegedly
11 novel abstract idea. And that does not make that abstract
12 idea patentable.

13 So the claims here just talk about, again, the
14 collection, analysis, and display of available information.
15 They don't specify a particular way of doing that. The
16 elements recited are generic; receiving, identifying,
17 processing, combining information. And those recitations do
18 not create anything that can be patented.

19 There are some additional claims, Claims 7, 8, and
20 9, for example, that specify the particular category of
21 information that is used to select a base station within a
22 particular group.

23 But as this case, this Court noted, again, in one
24 of the Uniloc cases, Uniloc vs. Amazon, a claim that limits
25 the calculation to a particular kind of data does not suffice

1 to raise an abstract idea to the level of something that is
2 patentable.

3 You can have an abstract idea and then recite
4 independent claims, well, it is used on that kind of
5 information, that kind of information, but it is all data.
6 Under Electric Power and Digitech, it is all data. And
7 regardless of what kind of data is specified to be
8 manipulated or used, that does not rise to the level of
9 patentability.

10 A couple of claims relate to a terminal positioning
11 method which uses the abstract idea. That is an
12 insignificant post-solution activity. Again, it is like
13 radar. It is using a signal and when it is sent and when it
14 is received and the time that it takes to implement an
15 abstract idea; and that, again, is completely conventional
16 and does not rise to the level of a patentable claim.

17 Claim construction, here again, for the '139
18 patent, does not make a difference. The parties have
19 actually agreed on the index of communication quality. That
20 is what is characterized as an individual base station. The
21 differences between the party on the characterizing
22 quantities element, which we regard as the group score
23 element, and that is what is shown in the figure, also really
24 doesn't make a difference here.

25 Under either construction what is being manipulated

1 simply is data, data that is taken from a bunch of components
2 of a group in order to create a characterizing quantity for
3 the group as a whole. That, under the cases we have cited,
4 does not create any patentable subject matter.

5 For those reasons, Your Honor, we believe that
6 Counts II and IV of this complaint should be dismissed. I am
7 happy to answer any questions or reserve the remainder of my
8 time for rebuttal.

9 THE COURT: Yeah, thank you, Mr. Young. I know you
10 are addressing the '139 there; and on the claim construction
11 issue, I would like to ask you with respect to it, as well as
12 the '292 patent, you know, I frequently have movants in 101
13 motions say: You know, just assume, for the purposes of
14 argument, the non-movant's or the Plaintiff's proposed claim
15 construction, and we still win on 101.

16 So I am wondering -- I'm curious, is that a
17 position that you are willing to take here? I am not
18 familiar -- other than what you have just described this
19 afternoon, I am not fully familiar with, you know, the
20 constructions that the parties have exchanged. I know we
21 have a Markman that is set in a couple of months. But what
22 are your thoughts about that?

23 MR. YOUNG: We would certainly be willing to accept
24 the Plaintiff's claim construction solely for the purposes of
25 decision on this case. As I said, it makes no difference.

1 And the only way we can argue that is to say if you assume
2 they are right on that, we win. And we do believe we do win.

3 Just going back to the '292 constructions, just to
4 focus on that for a moment, accepting the Plaintiff's
5 constructions, which we do believe to be wrong, but assuming
6 we accept them for this motion, actually assists us on this
7 motion.

8 And for -- the reason for that is, that for several
9 of the elements, as you can see with respect to the GPS
10 reliability calculation means and then the combining means,
11 they say that the disclosure includes a CPU. That is a
12 general central processing unit. It could be programmed in
13 many different ways.

14 The fact that they say that that is a disclosed
15 structure with respect to these claim elements, indicates
16 that under their own claim construction these are completely
17 conventional elements and should not be patentable because
18 you can't say, do it on a computer and have it be patentable.

19 Now, we do happen to disagree that a CPU is
20 disclosed. With the diagrams and the discussion of the -- in
21 the specification, in our view, do not disclose a CPU. So we
22 think that they are wrong in that. But assuming that they
23 are right, I believe that actually supports our 101 motion.

24 THE COURT: Okay. Then this question is also sort
25 of related to claim construction, and I guess given that

1 answer, it is somewhat of an academic question. But there is
2 a standard that the Plaintiff's claim, I think, in their
3 surreply that, you know, whether claim construction could
4 affect the analysis is kind of the dispositive issue. Do you
5 agree with that, or do you think the standard is higher?

6 MR. YOUNG: I think they need to demonstrate
7 something about the claim construction that could make a
8 difference. Now, granted, I do want time to rebut because we
9 haven't had any briefing since the claim constructions; but
10 at least my view of the claim constructions, is that they
11 don't show anything that could possibly make a difference
12 with respect to this Alice issue.

13 THE COURT: Okay. And then, finally, they contend
14 that I think in the early 2000s the mobile handsets and
15 receiver means were not generic. Would you address that?

16 MR. YOUNG: I don't think that is true. You know,
17 they actually in their briefing talk about how they did these
18 patents or their predecessors did these patents prior to the
19 iPhone. That isn't relevant in this case, and I don't
20 believe it is true.

21 The '292 specification, for example, explicitly
22 states the state of the art with respect to cellular
23 components and GPS components, and I think that the -- for
24 example, going back to Column 2 and Column 5 starting at
25 lines -- actually Column 1 starting at Line 13, it talks

1 explicitly in the patent about -- and this is the background
2 of the patent -- about GPS systems, how they have been used
3 in practical applications such as car navigation. And they
4 talk about how in conjunction with a method using GPS, a
5 cellular telephone network is used to notify a handset of
6 auxiliary information for receiving radio waves for GPS.

7 So the elements that are described in the '292
8 patent, the cellular and GPS elements are not new and were
9 conventional.

10 THE COURT: Thank you, Mr. Young.

11 MR. YOUNG: Thank you, Your Honor.

12 MR. FUSSELL: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. FUSSELL: I'm just going to switch this over
15 here.

16 May it please the Court. Tripp Fussell on behalf
17 of the Plaintiffs Hitachi Maxwell. Your Honor, what I would
18 like to start off by pointing out here is that, as the
19 Plaintiff -- as the Defendants' own argument has pointed out,
20 this -- this is -- this issue here presented by the
21 Defendants is premature.

22 Essentially, what I heard the Defendants say and
23 what they have argued in their briefs is that this is just a
24 combination of conventional components in each of the patents
25 that don't perform any new, non-conventional element.

1 But the issue of whether or not a combination of
2 conventional elements is patentable or not, is an issue of
3 validity, you know, which we point out in our reply.

4 Essentially, what the Defendants argue in here is a
5 question of obviousness. You know, it was obvious to combine
6 all of these conventional components to perform the function
7 that we have claimed. But that is an issue for novelty, not
8 an issue of eligibility.

9 In addition -- and the Court pointed out this as
10 well, is the issues of claim construction. Claim
11 construction, you know, under Markman defines the scope of
12 the claims, what the inventors claimed as their invention.

13 So it is -- it is -- it is imperative to know what
14 the scope of the claims are before we can say whether or not
15 they are eligible for patentability, so we think it is
16 premature from the standpoint of the Court should've
17 construed the claims in advance.

18 Now, to the point of whether they will accept our
19 construction or not, you know, we think under our
20 construction it actually points out, you know, even makes our
21 case stronger that the claims are eligible for patentability.
22 We will make that point here as well.

23 What I would like to start off with is kind of
24 backing up. You know, they describe the -- what the patent
25 is and what it is directed to, and I think we pretty much

1 agree for the most part that it is directed to a method or
2 apparatus for determining of the '292, that is, the position
3 of the mobile device using GPS and cellular signals.

4 The invention calculates the location of the GPS
5 and cellular signals. It estimates the reliability of each
6 of those signals, and then it combines those to determine
7 location of the device.

8 Now, I remind the Court that this was in 2001.
9 This was before everybody was walking around with a device in
10 their hand that did all of this information. This was eight
11 years before the first iPhone came out that even had GPS
12 capabilities.

13 The inventors here foresaw the issues that they
14 were -- people were going to eventually incorporate this
15 location information and need that information to determine
16 their location; but they saw the problems with that, with
17 using GPS alone.

18 For example, Your Honor, with the traditional like
19 just the Garmin or TomTom device back in the day you might,
20 you know, be out in the open and be able to get, you know,
21 six satellite signals, and it can pinpoint your position down
22 to the foot, you know. And you might be in a position where
23 with a cellular device you are in, you know, an urban area
24 where you can get numerous cell towers and triangulate your
25 position based on a plethora of cell towers to pinpoint your

1 location.

2 But in certain situations, and inventors saw this,
3 you know, you may not be able to get a GPS satellite signal
4 or maybe you can only get one GPS satellite signal; and,
5 therefore, you know, you get two satellite signals, for
6 example, that can't pinpoint your location, and that device
7 is telling you you are 200 feet away or you are on top of a
8 mountain. We all remember that from back in the day.

9 Or maybe you are inside of a building where you
10 can't receive signals at all, and you can't get any GPS data,
11 how does it determine your location?

12 Well, looking to cellular to correct that problem,
13 you can actually triangulate your position based on cellular
14 towers. But let's say you are out in a very rural area where
15 you only have a single cell tower and there is no -- or you
16 have no service whatsoever, if you are relying on that alone,
17 you can see that you are not able to determine your position
18 at all.

19 They saw these problems back in 2001 before anybody
20 was actually using these -- years and years before anybody
21 was actually using these in a mobile device that everybody
22 carried around with them, they foresaw these issues. And
23 they decided that, you know, look, if we take GPS and we take
24 cellular, we not only take that information and combine it to
25 determine the position; but we first check the reliability of

1 that information.

2 Maybe that GPS signal that I am getting is only
3 based on one satellite. It is not very reliable. But the
4 cellular data that I am getting does have multiple cell
5 towers, and it is more reliable, and I shouldn't discredit or
6 reduce the reliability of that GPS signal when I combine the
7 two to actually determine the location of the device.

8 And they do this simultaneously. It is not getting
9 one set of data and the other set of data and then later
10 combining those in some fashion. It is doing this all
11 miraculously right there on your device right in one
12 instance.

13 If we look to the claims of the '292 patent, it
14 talks about a GPS receiver means, a GPS position calculation
15 means, a GPS reliability calculation means, cellular receiver
16 means, cellular position calculation means, cellular
17 reliability calculation means -- excuse me -- and a
18 GPS/cellular position result combination means.

19 Now, if we look to the Figure 1, you can see that
20 this is how the information was brought in. Through a single
21 antenna or through an antenna means, the 100, the device
22 receives cellular or GPS information.

23 The GPS information enters into a GPS receiver
24 block 200. That is then processed and the position of the --
25 based on the GPS data is determined. Then the invention

1 describes testing the reliability of that information and
2 doing the same from the cellular data down at block 300, 301,
3 and 304.

4 And then in block 400 it actually takes that
5 information and combines it in this new and non-obvious way
6 to determine the position of that device.

7 Similarly, the '139 patent is directed to a method
8 and apparatus for wireless terminal or mobile handsets to
9 select a base station from a plurality of base stations
10 according to the communication services that are offered by
11 the wireless terminal, the communication quality required.

12 Again, this was back in 2005, your Honor. The
13 inventors foresaw the problems associated with wireless
14 terminals selecting base stations regardless of the needs of
15 the device.

16 Essentially, what the devices were doing is just
17 determining what cellular tower is giving me the most
18 powerful signal and then selecting that -- of multiple cell
19 towers, selecting the ones that give me the most power.

20 But in some instances cell towers are grouped in a
21 certain fashion, and maybe -- you know, even though I am
22 receiving a high power in one -- from one satellite tower, I
23 may -- that group itself may have a lot of bandwidth being
24 taken up, for example, by multiple users.

25 For example, a cell tower at your neighbor's house

1 that lives next to a Safeway, it also is in a group of cell
2 towers that actually have a lot of bandwidth being used
3 because that Safeway has so many users in there that are
4 using their phones.

5 So that -- when you group those cell towers
6 together, that quality of the service provided from that
7 group is not as high as maybe that single cell tower that
8 your phone is receiving a power signal from.

9 So what the inventors came up with is an idea for
10 actually categorizing the quality of the service within a
11 group of services, indexing that quality, and then selecting
12 from the group the single cell tower to be used within that
13 group.

14 So, for example, if you select one that has -- you
15 want to watch movies on your phone, for example, that require
16 a very high bandwidth, you want to get into a group of cell
17 towers that can actually provide that bandwidth across the
18 entire group, so that if you jump from one tower to the next
19 you don't see disruptions in your service. So when you are
20 watching your movie at your neighbor's house and you switch
21 over to another tower that has a bunch of people at the
22 Safeway using that same tower, you don't see disruptions in
23 your movie watching capabilities.

24 The '139 patent claims directed to a first step of
25 obtaining an index of communication quality between the

1 terminal and the base stations, the second step of
2 calculating the characteristic qualities of the communication
3 qualities for each group; that is, it determines the entire
4 group's total group score, as the Defendants pointed out, and
5 a step of specifying one of the plurality of groups based on
6 the characterizing quantities and selecting one of the base
7 stations.

8 So from that, as I described, it selects, based on
9 the characterizing qualities of that group, a single base
10 station to connect to for the device.

11 In looking at the diagram from Figure 2, the patent
12 describes instances where, for example, base station 201 and
13 203 are in a single -- are in a group of base stations.

14 So like I previously discussed, if 201 and 203 are
15 in a group and 202 and 204 are in a group, and 201 provides a
16 very strong signal, so my device can read from 201 that that
17 signal is strong; therefore, I want to connect to that
18 signal.

19 But if you combine 201 and 203, you see that the
20 group score, the group -- or the total power that is output
21 by that group is actually kind of small. Whereas, the
22 combined output of 202 and 204, though maybe neither one of
23 them individually is higher than 201, together as a group
24 they provide much -- much stronger signal. And, therefore,
25 my device would connect to that group instead, so that I know

1 if I jump from 202 to 204 I will see minimal disruption.

2 And, of course, as the Court is well aware, the
3 Alice Supreme Court provided the two-part test, whether the
4 claim is issued directed to one of the patent's ineligible
5 concepts such as abstract idea. If so, whether the claim has
6 an inventive concept, an element or combination of elements
7 sufficient to ensure that the patent in practice -- practice
8 amounts to significantly more than a patent upon the
9 ineligible concept itself.

10 One thing important to note here is that in Alice
11 the Supreme Court struck a delicate balance between trying --
12 to tying up fundamental building blocks of innovation while
13 not swallowing up patent law as a whole, rightly explaining
14 that all inventions at some level embody abstract ideas, laws
15 of nature, or natural phenomenon.

16 As pointed out in this slide here in the quote from
17 the Alice decision: We have repeatedly emphasized this
18 concern that patent law not inhibit further discovery by
19 improperly tying up the future use of these building blocks
20 of human ingenuity. At the same time, we tread carefully to
21 construe this exclusionary principle, lest to swallow all
22 patent law as a whole.

23 Therefore, the Courts in applying 101 must
24 distinguish between patents that claim the building blocks of
25 human ingenuity and those that simply integrate those

1 building blocks to come up with something new and
2 non-obvious.

3 It is our position that is, in fact, what the
4 inventors of the '292 and the one three patent -- '139 patent
5 have done here.

6 The claims of the '292 patent did not attempt to
7 monopolize every potential solution for combining two data
8 sources based on their reliability.

9 The claims are directed to solving a specific
10 problem of locating a mobile device.

11 The claims require specific data sources, GPS and
12 cellular data signals.

13 The claims require specific ways of combining that
14 data, applying a reliability estimate before combining the
15 two.

16 The specification discloses concrete examples of
17 how reliability is calculated and how the data sources are
18 combined to get their location.

19 Taking that a step further, Your Honor. It is
20 important to look at the fact that this patent is not
21 preempting any building blocks. You know, if you look at the
22 claims of the '292 patent, it is not preventing the use of
23 GPS to get position information. It is not preempting the
24 use of cellular signals to determine calculations. The
25 claims do not preempt the determination of reliability of GPS

1 signals.

2 It is not preempting any fundamental building
3 blocks. It is not preventing anybody else from using those
4 that are well-known devices. What it has done is combined
5 conventional, if you will, in a non-conventional way, in a
6 very new and non-obvious way to address these very specific
7 problems that the inventors foresaw.

8 The same is true with the '139 patent. The claims
9 of the '139 patent do not preempt or attempt to monopolize
10 every potential solution for selecting a particular object
11 within a group, as the Defendants would have you believe.

12 The claims are directed to solving a very specific
13 problem. The inventors of the '139 patent saw that there was
14 a problem with simply selecting a base station based on the
15 highest power of the base station that you could find.

16 The claims are limited to the specific metrics of
17 indexing of communication qualities and characterizing the
18 quantities of the communication quality.

19 The claims require a specific way of using these
20 metrics, not previously known to a select base station.

21 Again, even taking it a step further, they do not
22 preempt any building blocks. The claims do not preempt the
23 selection of a base station from a group of base stations.

24 It doesn't preempt the use of index of
25 communication qualities. It doesn't preempt the use of

1 characterizing quantities to select a base station.

2 It doesn't prevent anyone else from using these
3 building blocks, if you will. It only claims them in a very
4 non-conventional way to solve the specific problem that the
5 inventors had identified.

6 What Huawei does for both of the patents here is
7 they read out the claim elements to a point of abstraction.
8 They basically do what the Supreme Court warned against in
9 the Alice decision by attempting to generalize the patents to
10 a point of abstraction.

11 Huawei argues that the claims of the '292 patent
12 are directed to nothing more than a combination -- nothing
13 more than combining two data sources. And the claims of the
14 '139 patent are directed to nothing more than collecting and
15 analyzing data that a wireless terminal uses to select a base
16 station.

17 However, this creates -- Huawei, however, creates
18 its abstract idea by dismissing all context and claim
19 elements from the patents as conventional or data
20 manipulation.

21 So, basically, they strip away all of the
22 limitations of the claim and boil down to only their very
23 basics, in an attempt to make this appear as an abstract idea
24 rather than a true invention that it is.

25 As the Court, I am sure is all too aware, there is

1 no bright line test that is dictated by the Supreme Court or
2 the Federal Circuit. However, the case law is important, and
3 it establishes some specific guideposts that we can look to
4 to determine what is patent -- what patent eligible -- what
5 is patent eligible and what is not.

6 First, are the claims directed to an improvement of
7 computer-related functionality? You know, in the Enfish case
8 the Court said that: Claims directed to a specific
9 improvement to the way a computer operates are typically
10 patent eligible. The key question here, whether the focus of
11 the claims is on the specific asserted improvement in
12 computer capabilities or instead on the process that
13 qualifies as an abstract idea.

14 In this instance, Your Honor, with both the '292
15 and '139 patent, the claims are an improvement to the
16 computer-related functionality. They were improving the way
17 that a mobile device determines its position by gathering GPS
18 and cellular data, so it was an improvement of that
19 computer-related functionality.

20 And with respect to the '139 they were also
21 collecting data from multiple base stations to determine the
22 best communication qualities of the group of base stations to
23 better select the base station for that particular device's
24 needs.

25 So it is our position that at this point you can

1 decide that these patents are, in fact, an improvement on
2 computer-related technology that makes them entitled to --
3 eligible for patentability. That is to say, these inventors
4 identified a discrete problem.

5 They took what was on the shelf for them, these
6 conventional, you know, knowledgeable information that they
7 knew of; but they combined that in a very non-conventional
8 way to solve these discrete problems that they had
9 identified. That is, improving on the computer-related
10 functionality, not simply using a computer to solve a
11 specific problem that you can do by hand, for example.

12 The second guidepost that we have identified in our
13 briefing, Your Honor, is: Do the claims require more
14 specific hardware than a general purpose computer?

15 This gets to the point I was just raising. In the
16 Thales case the Court said that: Just as claims directed to
17 a new and useful technique for defining a database that runs
18 on general purpose computer equipment are patent eligible, so
19 too are claims directed to a new and useful technique for
20 using sensors to more effectively track an object on a moving
21 platform.

22 I will point out the specifics of the Thales case
23 and how they directly line up with the claims here, but I
24 just want to make this point clear is that, you know just --
25 the mathematical equation is required to complete a claim

1 element does not doom that patent to ineligibility.

2 This goes all the way back to Diamond vs. Diehr.
3 In that case the Supreme Court confirmed the eligibility of
4 patent claims despite the inclusion of a mathematical formula
5 running on a general purpose computer to determine the
6 optimal curing time for rubber tires.

7 This is because the claims, viewed in their
8 entirety, improved on the prior art molding for tires.
9 Essentially, what was happening back in the days there was
10 everybody knew how to mold tires, and everybody knew that you
11 had a specific amount of time that was ideal; but they
12 couldn't quite nail it. They couldn't quite nail that time.

13 So sometimes the curing was a little too long.
14 Sometimes the curing was a little too short. And when they
15 broke the mold, you know, they weren't quite sure what they
16 were going to get. Even though they could calculate based on
17 the specific mathematical that is claimed in the claims of
18 the patent at issue, in Diehr the Court said that:

19 Notwithstanding the fact that you are just talking about a
20 general purpose computer running this equation that everybody
21 knows of, you are actually doing it in a very
22 non-conventional way that nobody else was doing before so
23 they can nail that timing just right, in order to break the
24 mold at just the right time.

25 That is exactly the issue with both the patents in

1 this case, the '292 patent and the '139. Both are
2 combinations that were non-obvious and entitled to patent
3 eligibility.

4 The '292 patent claims more. It claims a mobile
5 handset, a GPS/cellular receiver, a GPS/cellular position
6 calculation means, a GPS/cellular reliability calculation
7 means, a GPS/cellular combination means. All of this to
8 combine the positions based on the reliability, which is more
9 than just running a mathematical equation, a weighted average
10 as the Defendants argue, on a general purpose computer.

11 All of these elements are taken into account when
12 they are receiving the cellular position, receiving the GPS
13 position using those components to determine the position of
14 the device, checking with the reliability means to determine
15 which of those is the most reliable, and then combining those
16 to actually get a very reliable position of the device.

17 The '139 patent claims require a terminal and a
18 plurality of base stations that exchange information to
19 determine the most appropriate base station. It is more than
20 simply running a mathematical equation on a general purpose
21 computer.

22 Third, to the extent the claims use data -- this is
23 the third guidepost that we have pointed out from the case
24 law, do they do so to accomplish specific technical ends
25 rather than simply a result? That is to say, as the Court

1 pointed out in the Electrical Power Group: The critical
2 inquiry is whether the claims merely present the results of
3 data collection or whether there is more to the claims with a
4 specific use of the data or a particular tool. Whether there
5 is more to the claims here than simply just spitting out the
6 results.

7 For example, with the '292 patent, there is more
8 than just getting data, analyzing the data, and spitting out
9 the positioning. There is collecting GPS data. There is
10 also collecting cellular data. There is using that data to
11 determine the position of the device, then checking the
12 reliability of those positions, and then combining the two,
13 so that I get -- so that I get a better position estimate of
14 the device itself.

15 That is much more than just simply analyzing,
16 comparing, and spitting out a result, as the Defendants would
17 have you believe.

18 Another quote here from McRo: We, therefore, look
19 to whether the claims in these patents focus on a specific
20 means or method that improves the relevant technology. They
21 did exactly what the inventors had done here with both the
22 '292 and the '139 patent. They had improved on the relevant
23 technology. They had gone out and identified a specific
24 problem associated with mobile devices, you know, a better
25 way and a more reliable way of calculating my position.

1 And they sat down, and they said, how are we going
2 to do this better? They come up with this new and
3 non-obvious way of determining the location.

4 The same is true with respect to selecting the base
5 station from the '139. They actually came up with a
6 technical solution that addressed the problem that they had
7 identified. That, Your Honor, is patent eligible.

8 The claims pass the first step with respect to the
9 more than a result. As I just noted, Your Honor, I went
10 through these, but the claims recite a way to locate the
11 mobile handset using GPS signals, cellular signals, and
12 estimates of those with respect to their reliability.

13 These claims are clearly directed to means and
14 methods of producing a certain result rather than the result
15 that it can produce -- or the result produced.

16 The same is true with respect to the '139 patent.
17 The claims recite a way of identifying a particular base
18 station. The claims are not directed to specific technical
19 ends not simply a resultant output.

20 The fourth guidepost that we have identified for
21 Your Honor is in the specific result required by the claim, a
22 concrete solution to the problem.

23 The Affinity Labs of Texas case, the Federal
24 Circuit pointed out that the representative claims were
25 directed to providing out-of-region access to regional

1 broadcast content, a broad distribution and familiar concept
2 concerning information distribution that is untethered to a
3 specific or concrete way of implementing it.

4 The claims simply claimed the function of wireless
5 communication, regional broadcast content to an out-of-region
6 recipient, not a particular way of performing that.

7 With respect to the '292 and the '139 patent, we do
8 talk about a very particular way of performing a function.
9 That is what the claims -- you walk by an element-by-element.
10 Don't strip down all of them to just their basic abstract
11 idea. You have to look at each of the elements claimed in
12 the patents.

13 And you see that there was a particular way that
14 these inventors came up with an idea for selecting the
15 location of GPS, solving the problem of when you are in a big
16 building and you can't get GPS signals, you can still get
17 your -- you can still get your position. At the same time
18 with locating the best base tower -- the base station, excuse
19 me, locating the best base station, they came up with a very
20 particular way of doing that.

21 Again, although there is not a bright line test for
22 determining claims, there were two cases in particular that
23 we wanted to point out for Your Honor that are very -- line
24 up very well with the claims of each of the patents.

25 The first is the Thales case, that I am sure the

1 Court is aware of. The claims are here. There was a first
2 inertial sensor mounted to a tracking object, a second
3 inertial sensor mounted to a moving reference frame, and an
4 element adapted to receiving signals from said first and
5 second inertial sensors and configured to determine the
6 orientation of the object.

7 So, essentially, Your Honor, the invention in
8 Thales was a particular configuration of inertial sensors,
9 very conventional at the time this invention was claimed, and
10 a particular method of using the raw data from the sensors in
11 order to more accurately calculate the position of the
12 orientation of the objects on a moving platform.

13 They said in that case that these claims are
14 eligible. These claims are not merely directed to an
15 abstract idea of using mathematical equations for determining
16 the relative position of a moving object to a moving
17 reference frame. Rather, the claims are directed to systems
18 and methods that use inertial sensors in a non-conventional
19 manner to reduce errors to measure the relative position of
20 the orientation to the moving object.

21 That is exactly what we have done here. Comparing
22 the two, you see that the Thales takes data from two
23 conventional inertial sensors and combining that data using
24 known mathematics to accurately calculate the position and
25 orientation of an object on a moving platform.

1 It is exactly, if you will, Your Honor, what the
2 Defendants are arguing is abstract about the '292 patent. We
3 are taking data from two, what they argue are, conventional
4 sensors, GPS and cellular data, determining the reliability
5 of that information obtained, combining that data using known
6 mathematics to accurately calculate the position of the
7 mobile handset device.

8 A comparison of the claims in Thales against the
9 claims in the '292 patent comes up with no other
10 determination but patent eligibility. If they are eligible
11 in Thales, they have to be eligible for the '292 as well, in
12 our opinion.

13 In a very recent case that just came out in August
14 from the Federal Circuit, Visual Memories vs. NVIDIA, the
15 claims there are directed to a memory -- a main memory
16 connected to a bus -- very conventional -- a cache connected
17 to said bus -- again, very conventional components -- wherein
18 a programmable operational characteristics of said system
19 determine a type of data stored.

20 Essentially, the invention there was an enhanced
21 computer memory. And the Court said that the claims focus on
22 a specific asserted improvement to a computer capability.
23 The use of programmable operational characteristics that are
24 configured based on the type of processor instead of a
25 processor that qualifies as an abstract idea for which the

1 computers are invoked merely as a tool.

2 Just like the patents in Enfish and Thales, the
3 specification discussed the advantages offered by the
4 technology improvement. If you will look at the
5 specifications of both the '292 and the '139, they are
6 identifying a very specific problem. And they are coming up
7 with a solution to that problem. That is what our patent
8 system is all about.

9 Comparing the visual memory invention and what that
10 covered, with the claims of the '139 patent, again, you will
11 see, Your Honor, that if the Visual Memory claims are
12 patentable, so too are the patent claims of the '139.

13 In Visual Memory it was a memory system with
14 programmable operational characteristics defined by the
15 processor, connected to the memory system, enabling the
16 interoperability for multiple processors.

17 Similarly, in the '139 the base station is
18 selecting the communication qualities defined by a terminal's
19 connection to a group of base stations, enabling the terminal
20 to calculate the characterizing quantities of the group of
21 base stations to select a very specific base station that is
22 best suited for that device's needs.

23 We take the position, of course, Your Honor, that
24 there is no need to get to the second step; but even looking
25 at the second step, we believe that the inventions do -- the

1 inventions of both patents do show an inventive step. The
2 claims of both the '292 and '139 patent add significantly
3 more than alleged abstract idea.

4 Huawei takes the position that both are nothing
5 more than a combination of conventional elements. However,
6 the claims are directed to novel and inventive combinations
7 of the elements.

8 As a good case quote that we came up -- that we
9 found here, Your Honor, In re Wright, 843 F.2d 1216:
10 Virtually all inventions are combinations and every invention
11 is formed of old elements. Only God works with nothing. Man
12 must work with old elements.

13 In every invention, Your Honor, you are talking
14 about at some level something as conventional that you are
15 using to combine those conventional elements and in some new
16 and non-obvious way to actually come up with something as a
17 new invention.

18 There are almost no instances, certainly in this
19 day and age, where you are going to find something completely
20 new and non-conventional that is the core of the -- or the
21 entirety of the invention.

22 The claims pass the second step by solving a
23 problem specific to computers as well. The problems arise in
24 the context of computers. We are talking about mobile
25 devices, essentially, a small computer, if you will. And the

1 claims both improve on the functionality.

2 You know, these were little devices, computers, if
3 you will, processors that were determining the position of
4 that device. And they improved on the mechanism of how that
5 device actually uses it, actually determines that position.

6 The same thing with selecting the base station.
7 They improved on that functionality, and they solved a very
8 discrete problem, which is why the patents are eligible for
9 patentability under 101.

10 Again, this only gets to the issue of validity and
11 not eligibility. You know, despite raising it as an
12 eligibility attack, Huawei's real argument here is that the
13 asserted claims are obvious. They are saying this
14 combination of conventional elements is put together in a
15 conventional way.

16 That is at the core of KSR where the Court said:
17 Simple arrangement of old elements with each performing the
18 same function it made -- it had been known to perform, is a
19 question of obviousness under 103.

20 That is precisely what the Defendants are arguing
21 here. It is a question of validity. It is premature to be
22 decided on this motion to dismiss.

23 At a minimum, as we pointed out at the beginning,
24 Your Honor, the Court should go through the process of claim
25 construction to specifically determine the scope of the

1 claims of the '292 and the '139 patent before deciding
2 Huawei's motion to dismiss.

3 An eligibility analysis turns on whether the
4 claimed invention is outside the scope of the patentable
5 subject matter. That is precisely what the claim
6 construction process does. It determines as a matter of law
7 what the scope of the claims are.

8 We are at a point now, Your Honor, with two months
9 away, it only makes sense for the parties to argue claim
10 construction and determine what the scope of the claims truly
11 means --

12 THE COURT: Help me understand, Mr. Fussell,
13 specifically how a claim construction is going to affect the
14 analysis?

15 MR. FUSSELL: Yes. Looking at the positions --
16 just, for example, here we have in the GPS receiver means
17 receiving GPS-oriented signals, the Defendants take the
18 position that this is simply a -- GPS-oriented signals -- I'm
19 sorry. That is a functionality. The structure -- we agree
20 on the function. The structure is that the GPS receiver 200
21 is all that is performing that GPS receiver functionality.

22 But if -- you know, the Plaintiff's position, which
23 we believe is a correct construction, is that it is more than
24 just that GPS receiver means. It is GPS receiver means, the
25 components within the mobile handset for receiving the

1 signal. That includes the antenna, the transceiver, and the
2 processor that performs GPS receiving processing, and the
3 corresponding recitations in the specification, which we have
4 cited to here and which are included in our joint claim
5 construction statement.

6 As we pointed out earlier, Your Honor, one of the
7 guideposts is, is it more -- excuse me. Do the claims
8 require more specific hardware than a general purpose
9 computer?

10 As our claim construction points out, just that
11 being of one example, these are a number of components within
12 the device that actually require receiving that signal. This
13 is just one of the claim limitations. There are seven
14 means-plus-function limitations that need to be decided by
15 the Court, all of which are comparable and have a similar
16 scope differentiation between the two parties.

17 But just that alone, just pointing out how there
18 are all these multiple components that actually do the
19 receiving process as described in the specification of the
20 '292 patent, actually, do more than just a generic computer,
21 which is -- or just a generic GPS receiver.

22 So, obviously, deciding that, Your Honor, on the
23 front end before deciding the motion to dismiss, makes
24 complete sense, in our opinion.

25 And the same is true for each of the other

1 means-plus-function limitations in the '292 patent.

2 Unless you want me to address the specifics of
3 each, I'm happy to take any additional questions, Your
4 Honor.

5 THE COURT: On the claim construction issue, is
6 that what you mean --

7 MR. FUSSELL: Yes, sir.

8 THE COURT: -- the specifics? I don't think,
9 Mr. Fussell, that is set forth in the briefs, so it would
10 help me if you don't mind going through that.

11 The brief, of course, was filed --

12 MR. FUSSELL: Yeah, the briefing was filed before
13 the actual -- the parties exchanged claim constructions and
14 filed their joint claim construction statements.

15 The positions of the parties taken in the
16 presentation slides here are actually directly taken from the
17 joint claim construction statement that has been filed with
18 the Court.

19 Similar to the GPS receiver means, the GPS position
20 calculation means, the parties disagree with the structure
21 that is described in the specification.

22 Again, the Defendants argue that the position --
23 the GPS position calculation means is simply the position
24 calculation unit GPS 201, GPS block 201, in the specification
25 and in Figure 2; whereas, we are -- we disclosed that the

1 structure, as required by the specification, is a processor,
2 a position calculation unit, and/or a mobile handset that
3 performs processing functions or their equivalents.

4 So it is our position, Your Honor, that GPS
5 position calculation means is more than just a simple device.
6 It actually is inclusive of multiple components of the cell
7 phone itself.

8 THE COURT: Okay. And so tell me, just so I
9 understand, how does that specifically relate to the
10 eligibility question?

11 MR. FUSSELL: Well, they are saying, Your Honor,
12 that this is just a general purpose computer running a simple
13 math equation and spitting out a result. But it is more than
14 just that.

15 As the claims require and as proper claim
16 construction will help the Court determine, it is more than
17 just a general purpose computer. It is multiple components
18 within that device actually receiving information,
19 calculating the position, calculating the reliability of that
20 position that was determined, and then a separate component,
21 which is actually combining it.

22 So more than just a general purpose computer. It
23 is actually multiple components of a device that all are
24 required to actually perform the functionality.

25 Now, that is not to say that if it is -- if you

1 agree with their construction, that the patent is not
2 eligible. I am just saying this can help -- determining this
3 full scope may help with the decision from the Court on
4 determining eligibility.

5 THE COURT: Very well. Okay. And then I guess two
6 other questions. In the '292, the weighted averaging that
7 occurs, is it possible for that to be performed by the human
8 mind?

9 MR. FUSSELL: I would say it is, yes.

10 THE COURT: Okay. And then last question --

11 MR. FUSSELL: But I would actually go back to that
12 because it is not just plugging numbers into that equation
13 that is the invention of the '292 patent because, for
14 example, what if your GPS signal is unreliable? You have no
15 satellites. Therefore, you have a 0 there. Then that
16 reliability calculation is 0, and the cellular position is
17 the only one that is taken into account in determining the
18 position of the device.

19 So it is more than just plugging in those numbers
20 into an equation. It is just like I pointed out in the
21 Diamond vs. Diehr, there was an equation actually called out
22 in the claims of that patent. And the Courts determined that
23 that was patent eligible because it was a new combination of
24 creating a molding for rubber tires that the inventors came
25 up with, notwithstanding the fact that this arithmetic that

1 had been known to everyone prior to their invention, was
2 capable of being done by hand. It was simple mathematics.

3 THE COURT: Okay. And then, finally, if we were to
4 consider the expert declaration that was filed along with the
5 response, wouldn't we have to convert this to a summary
6 judgment motion?

7 MR. FUSSELL: Well, as I mentioned before, Your
8 Honor, we think that this issue is premature. There are
9 issues of fact here. So we believe it would need to be
10 converted to a summary judgment motion.

11 And we believe that the expert declarations should
12 be taken into account, as they actually point out that these
13 were non -- these are experts in the field that point out
14 that, you know, in 2001 for the '292 patent and in 2005 for
15 the '139 patent, these were non-conventional combinations of
16 elements that were, in fact, entitled to patentability.

17 THE COURT: Okay. Thank you very much,
18 Mr. Fussell.

19 MR. YOUNG: Your Honor, should I start now or --

20 THE COURT: How about a short break, just a
21 five-minute break?

22 We will be in recess.

23 (Recess was taken.)

24 THE COURT: Please be seated.

25 Mr. Young.

1 MR. YOUNG: Yes. Thank you, Your Honor.

2 I plan to address the various points that Counsel
3 made, pretty much in order.

4 Mr. Fussell mentioned a claim that we are trying to
5 turn this into a validity issue. We are not. However, what
6 the specification and file history say about the prior art is
7 relevant to the issue under Step 2 of conventionality.

8 And I will actually quote from this Court's
9 decision in Uniloc vs. Amazon, 16cv570, in a decision issued
10 on March 20, 1990 -- 2017, which is the day before we filed
11 our reply brief. And I think we probably would have quoted
12 this if we had been able.

13 It is on Page 17 of the Court's decision: A 101
14 inquiry properly relies on intrinsic evidence concerning the
15 prior art. In the context of determining whether a claim
16 element is known; i.e., so well-known as to be
17 conventional -- conventional, routine, or contained an
18 inventive concept. Although the 101 and 103 inquiries may
19 rely on several tools; i.e., references showing claim
20 elements within the prior art, they are distinct and are
21 treated as such herein.

22 So our reference, for example, to what the examiner
23 said about the various elements of the '292 patent is highly
24 relevant to the decision as to whether the claims add
25 anything that is not conventional.

1 As to the '292 patent, Mr. Fussell did go through
2 Figure 1. We are, basically, in agreement actually on what
3 the claims do and what the figures do. It is really the
4 legal characterization on which I believe we greatly
5 disagree.

6 On the '139 patent, Counsel talked about the
7 advantages allegedly of the grouping and gave an example of
8 how if Safeway is in the group, that that patent can give an
9 advantage.

10 The problem with that argument is that the claims
11 of the '139 patent actually say nothing at all about how the
12 grouping takes place. It just says there is a grouping. It
13 doesn't tell you about what criteria are used to do the
14 grouping. And for that reason the patent seeks to preempt
15 the basic idea of grouping using any criteria.

16 And that is one of the reasons why it is an
17 abstract idea lacking an inventive concept and should not be
18 given the status of a patent.

19 We are not swallowing up the whole of patent law.
20 I think the case law that we cited in our briefs clearly
21 explains why under Electric Power, Digitech, TLS, and similar
22 cases, the particular claims in these patents should not be
23 given the status of patentability. We certainly don't say
24 anything out about other situations.

25 I would also note that even if there were some

1 non-preemption, that would not make our argument incorrect.
2 That is, as this Court said in Uniloc, another Uniloc case,
3 versus AVG technologies, in a case that the Court issued a
4 decision on on March 28th, 2017, the day after the last brief
5 in this case -- and that case is 16cv393. That the argument
6 that the scope of preemption is incomplete, is irrelevant
7 because complete preemption is not required under Alice. And
8 the Court there cites 134 S.Ct at 2355.

9 So the fact that if a claim -- the preemption is
10 not complete, doesn't matter. In any case, at least as to
11 the '292 patent, the attempt at preemption here really is
12 complete as to the use of weighted reliability factors in
13 determining how the information from the GPS and the cellular
14 signals are to be combined.

15 There is no limitation to that. So if you want to
16 rely on reliability, then under these claims if they are
17 allowed to stand, one would be preempted.

18 The -- there is no improvement to computer
19 functionality here. The use of a weighted average, the
20 grouping of pieces of information, that is no improvement in
21 computer functionality. That is completely like Enfish and
22 any of the other cases under which patents have been upheld.

23 Now, Mr. Fussell talked about two recent cases, the
24 Thales and Visual Memory cases. And I want to address both
25 of those. Thales was mentioned briefly in the parties'

1 briefs, and Visual Memory came out in August and was not
2 mentioned in the briefs.

3 First, Thales. That case involved a unique and
4 unconventional placement of inertial sensors on various
5 moving objects. It was a physical arrangement that was
6 unique. It did result in some information that would then be
7 mathematically combined. And it was really the physical
8 placement -- and I am looking at Page 9 of the Federal
9 Circuit slip opinion, which the Federal Circuit said: Used
10 inertial sensors in a non-conventional manner to reduce
11 errors in measuring.

12 Now, there was some calculating involved in that,
13 but I think the key in that case and what distinguishes it
14 from these patents is the physical placement of the sensors
15 which was unique and which was what resulted in the
16 patentable subject matter that the Federal Circuit found in
17 that case.

18 We don't have any unconventional physical
19 placements of anything here on these patents. The most we
20 have is an alleged novel or unconventional arrangement of
21 information or way of processing information. But the
22 components that collect the information, the components that
23 calculate the information, are all the same. They are just
24 receivers, CPUs, processors. There is nothing unconventional
25 there; and, therefore, the Thales case is not applicable.

1 In connection with Thales, Mr. Fussell referred to
2 the Diamond vs. Diehr case. And I would point the Court to
3 the discussion in the Alice decision of Diamond vs. Diehr
4 where the Federal Circuit -- actually, it is the Supreme
5 Court. This is the Supreme Court's case in Alice -- said the
6 invention in Diehr used a thermal couple to record constant
7 temperature measurements, something that the industry had not
8 been able to obtain.

9 So there is a distinction there that is not present
10 in this case. There is no new physical component of any sort
11 in this case. It is just using existing generic computing
12 components to calculate information in a way that is
13 allegedly different.

14 With respect to the more recent Visual Memory case,
15 I think that there is some relevant information there that we
16 need to consider. That case involved a memory system with
17 programmable characteristics that were tailored for use with
18 different processors.

19 In addition, the claims there utilized cache memory
20 differently depending on the type of processor that was being
21 used. So what you ended up with was an improved memory
22 system that constituted a technological improvement that you
23 don't have in this case. You don't have a set of components
24 that is unconventional.

25 You don't have a set of components that is

1 unconventional. You don't have memory components that are
2 being used differently depending on the kind of processor
3 that is being used. That is -- those are, for one, they are
4 physical components. They are not simply conventional
5 processing units or receivers.

6 And, two, there are arranged in a way and operate
7 in a way that leads to an improved memory system rather than
8 an abstract idea, which is what had been alleged in that
9 case. So it is a very different case.

10 I agree with Mr. Fussell that man must work with
11 old elements. However, if the old elements are abstract
12 ideas under Alice and in Section 101, they are not
13 patentable.

14 Certainly, there are plenty of cases with old
15 elements that are combined in new ways, and Visual Memory is
16 one of those, for example. But this is not a case where the
17 old elements that we are dealing with are of the kind that
18 lead to patentability.

19 Here, anything that is new is simply in the
20 arrangement of information in the way the information is
21 calculated. There is nothing new about the things that are
22 used to do that calculation. And for that reason, there is
23 no inventive step.

24 Now, Mr. Fussell also talked about the claim
25 construction issue, and I don't have a slide on it, but the

1 particular elements that he focused on related to, I believe,
2 the '139 patent.

3 And in those cases where -- simply we have a
4 disagreement on the claim construction. We say that the
5 corresponding elements are the figures in the diagram. They
6 say that, yes, that is included, but it also includes
7 antennae, transceivers, and processors. That actually helps
8 our case on the 101 issue. Antennae, transceivers and
9 processors are all generic components. They are all being
10 used in the same way they have always been used, to receive
11 information, to process the information.

12 The processing is allegedly different and unique,
13 but the acts that are performed by those components are
14 conventional generic acts. It is not like Thales where you
15 had sensors that are actually placed in a new unconventional
16 way. Those physical components that Hitachi Maxwell alleges
17 are part of the claimed elements here, are actually being
18 used in their conventional, generic way.

19 Now, Mr. Fussell, as to the '292 patent, gave us an
20 example of how the combination might work if GPS, say, is
21 unreliable. And he talked about how one of those factors
22 could be given a 0 weight.

23 We do have a disagreement on the claim construction
24 here. He said it is actually not used in the claim. We
25 believe that it is because Figure 3 actually still has it as

1 part of the equation, the weighted average in the equation.
2 It does mean, though, if there is a 0 reliability, the math
3 is easier because you end up with 0 in some of those places
4 in the equation.

5 But it is still used, and it simply emphasizes our
6 point, which is that if the math is easier it becomes even
7 more easy for someone to do that on paper with a pen.

8 Your Honor asked a question about the procedural
9 aspect of this if the Court were to choose to consider the
10 expert declarations in this case. We do believe as a
11 procedural matter that it would become a summary judgment
12 motion, and we would move the Court if -- in that instance
13 for summary judgment on the record that exists now.

14 There is a practical reason why an earlier decision
15 on the 101 issue would be helpful. We are about to start
16 claim construction briefing. There are 32 claims at issue,
17 many of the claim elements at issue.

18 There are many elements that are in the '292 patent
19 which Plaintiff wants to construe because they are
20 means-plus-function elements. We believe that even under
21 their construction we should prevail; that these patents are
22 not patentable subject matter; and the claim construction
23 proceedings would actually be significantly facilitated, and
24 the proceeding would be made much easier if this motion were
25 to be granted, as it should.

1 Unless Your Honor has further questions, thank you
2 very much.

3 THE COURT: I don't. Thank you, Mr. Young.

4 Mr. Fussell, any short response?

5 MR. FUSSELL: Just quickly, Your Honor.

6 Just to that last point, Your Honor, I thought that
7 I previously heard Mr. Young say that they would agree to our
8 constructions; therefore, that certainly facilitates the
9 claim construction process.

10 I say that tongue-in-cheek. I'm sorry.

11 THE COURT: I understood Mr. Fussell.

12 MR. FUSSELL: Just to sort of back this up and
13 highlight or take this to a higher level, Your Honor. That
14 is, what they are asking you to do here is, essentially
15 negate our patents, say it is not patentable under 101, and
16 kick these patents out before ever having claim construction
17 and determining the proper scope of the claims, which we
18 believe is important to the process here, specifically, but
19 also before we even consider experts and the facts at issue
20 in the case. And we have expert declarations that actually
21 point out that these are experts in the field that actually
22 have stated in their declarations these are non-conventional
23 combinations of -- you know, of these elements, which
24 actually is what the invention is in this case.

25 You know, they are saying that these are

1 conventional elements combined in a non -- in a conventional
2 way. And we have expert declarations saying that they aren't
3 actually that. You know, I think that is a fact issue that
4 should be considered by the Court and decided with the full
5 facts before the Court before deciding these issues. Either
6 that, or as the Court proposed earlier, converting this to a
7 summary judgment motion. We have no objection to that as
8 well.

9 Just quickly on some of the points raised. With
10 respect to the Thales case, he points out that the placement
11 of the sensors was unique. But the placement of the sensors
12 were just doing what they are conventionally meant to do, and
13 that is, determine the position and orientation of one device
14 compared to the position and orientation of another device.

15 And what they did was take those two conventional
16 elements to determine the position and orientation of one and
17 the position and orientation of the other and combine the two
18 instead of just determining the position and orientation with
19 respect to the earth itself.

20 Now, I don't see how that is so different than what
21 we have done here. We are taking some arguably conventional
22 devices, GPS receivers and cellular receivers, and combining
23 the information in there after determining their reliability
24 and producing an estimate of the position of the device. It
25 is doing something in a non-conventional way, which is

1 exactly what the invention in the Thales case was describing
2 as well. So I think that clearly supports our position and
3 even their position on that as well.

4 I believe that was all I had unless you have some
5 questions for us.

6 THE COURT: I don't. Thank you, Mr. Fussell.

7 MR. FUSSELL: Thank you.

8 THE COURT: Mr. Young, this is your motion. Do you
9 want to have the last word?

10 MR. YOUNG: Well, Your Honor, thank you very much
11 for your indulgence. Actually, I had two points. One,
12 because I wasn't sure we completely heard.

13 We certainly do disagree on the claim construction
14 issues. I think some of us are chuckling here. So,
15 obviously, we would agree for the purposes of this 101
16 motion, if that would facilitate the Court's ruling. But we
17 certainly disagree on the substance of the claim
18 construction.

19 The other issue, and this is a new point, and I
20 certainly would want Mr. Fussell to have a chance to address
21 this, is that he said in his remarks earlier that these
22 claims are more than taking the information, processing it,
23 and spitting out a result.

24 I am actually not so sure that that is right. I
25 don't know that anything is done in these claims other than

1 spitting out a result. The '139 claim is actually on the
2 screen in front of the Court. It talks about the third step
3 of specifying one of the plurality of groups, and then it
4 talks about selecting one of the base stations within the
5 specified group.

6 So it actually gets an answer. It tells you which
7 base station is selected. But then it doesn't do anything
8 with that. So, basically, at the end of the process you end
9 up with an answer as a result of all this information
10 processing, and that is it. You just get the answer.

11 The '292 claim is similar. What you do at the end
12 of Method Claim 2 is you output a combined position that
13 takes into account all of the processing that has taken
14 place. But that's it. You just end with an answer, which is
15 an X and Y coordinate. I do think it is just a spitting out
16 of the results.

17 Now, even if it were more than that, it wouldn't
18 determine the issue because you would still have the Alice
19 Step 2 that I think you are just taking information in,
20 processing it, and getting information out. And that is
21 really all you are doing with these claims.

22 Thank you.

23 THE COURT: Very well. Thank you, Mr. Young.

24 Mr. Fussell, do you want to respond to that?

25 MR. FUSSELL: I would just comment, Your Honor,

1 that, you know, this is exactly how -- what we pointed out in
2 the opening and in the briefing is that his point is the
3 point that we made earlier is that they are just stripping
4 down the claims to abstraction, which you can do, and as the
5 Court warned in Alice, you can do with any claims. And that
6 is all he is doing here.

7 THE COURT: Thank you. All right.

8 All right. Well, very well. I appreciate the
9 parties being here and the excellent presentations this
10 afternoon. We are coming up on claim construction briefing
11 and practice. I think this motion was fully briefed some
12 time ago. And to the extent there was a delay in getting
13 this set for a hearing, my apologies for that. We are
14 usually better about doing that.

15 And in all candor, I have to tell you the next
16 couple of months for us are really busy. We will endeavor to
17 get an order out on this as quickly as we can. But we do
18 have a number of trials set both here in Texarkana and in
19 Tyler over the next six weeks.

20 So I have learned my lesson about making promises
21 about when orders will come out. But I do -- I do assure you
22 we will get it out as quickly as we possibly can.

23 So unless the parties have anything else, we will
24 be in recess. Safe travels to y'all.

25 (Hearing adjourned.)

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/ Shea Sloan
SHEA SLOAN, CSR, RPR
Official Court Reporter
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